

## Commercially Useful Function Use and Evaluation

---

### **Commercially Useful Function applicability**

The PAM, Chapter 3, Topic 2, Infoblock 3.2.5 describes that all California certified SBs and DVBEs contractors, subcontractors and suppliers that bid on or participate in a state contract regardless of the procurement approach or the payment method must perform a Commercially Useful Function (CUF).

The purpose of the CUF requirement is to prevent certified SB/MB/DVBE businesses from acting as a “pass through” or “front” when identified as the prime bidder or when identified as a subcontractor from providing artificial or incidental participation to meet the socio-economic objective of a solicitation or contract. In either case, when CUF is not validated, there is a potential for obtaining unwarranted State preference advantages.

The CUF requirement applies to all departments conducting purchasing activities regardless of the procurement approach for both non-IT and IT purchasing authority(ies).

A business performing a CUF is one that does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract
- Carries out its obligation by actually performing managing or supervising the work involved
- Performs work that is normal for its business, services and function
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

In contrast a contractor, subcontractor or supplier is not considered performing a CUF if the contractor's, subcontractor's or supplier's role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of small business, microbusiness or DVBE participation.

#### Example:

A certified DVBE contractor that is a prime is not considered to be performing a CUF if it is requiring that the subcontractor perform all aspects of the contract as if the subcontractor had independently bid and been awarded the contract as the prime.

---

### **Capturing CUF information**

CUF information is obtained when a supplier completes the Bidder Declaration form (GSPD-05-105 Written Version or GSPD-05-106 Verbal Version). Consequently, as described in the Bidder Declaration topic, regardless of procurement approach the Bidder Declaration form as applicable to the solicitation method must be completed..

---

*Continued on next page*

## Commercially Useful Function Use and Evaluation, Continued

---

**Role of OSDS** As part of its normal certification process OSDS will review applicant information related to performance of a commercially useful function. Businesses determined to not perform a commercially useful function in at least one “business type” will not be certified.

OSDS designates “business types” in four categories:

- Manufacturer (Standard Industrial Classification or SIC codes in a specified range must be provided)
- Non-manufacturer (used for sellers of goods)
- Services
- Construction (requires valid contractors license as designated by the California State Contractors License Board)

For businesses that can be determined at time of certification to perform a commercially useful function, the OSDS website will, below the field designated “AKA Names,”:

- Indicate “CUF”
- Specify the element of work associated with the CUF (SIC Codes are also verified in conjunction with CUF)

In some cases, the OSDS may grant certification in more than one business type but not be able to determine CUF in more than one business type. In that case, the website will state “CUF: (*business type*) Buyer to determine.”

**Note:** This feature will become operational in 2007.

OSDS also investigates inappropriate use of certifications, including fraud or intentional misrepresentation related to CUF. Departments are to notify OSDS of suspected unlawful situations.

[Click](#) here to access the OSDS web page.

---

*Continued on next page*

## Commercially Useful Function Use and Evaluation, Continued

---

|                           |  |
|---------------------------|--|
| <b>Evaluation purpose</b> | To comply with law, the buyer must review information provided on the Bidder Declaration to determine whether certified businesses are performing a commercially useful function. Supplemental information related to supplier roles and responsibilities might also be provided in other sections of the bid. |
|---------------------------|--|

---

|  |  |
|--|--|
| <b>What if more information is needed?</b> | During the evaluation, if allowed for the particular solicitation, the buyer may seek clarification through written request to the bidder. Evaluators might also need to perform additional research or market analysis. |
|--|--|

---

|                                       |   |
|---------------------------------------|---|
| <b>Options when not CUF compliant</b> | The following identifies available options when a determination is made during the evaluation that a certified supplier is not CUF compliant: |
|---------------------------------------|---|

---

| When the certified | Is not CUF compliant then  |
|--------------------|--|
| Bidder             | The bid must be rejected.  |
| Subcontractor(s)   | When all of the following pertain, a purchase may be awarded: <ul style="list-style-type: none"><li>• The prime bidder is responsible (and the bid is responsive) without the involvement of the subcontractor, and</li><li>• The work can be performed by an alternate certified subcontractor firm that is properly substituted, and</li><li>• The transaction/solicitation permits substitution, and</li><li>• The result has no material effect on the bid and resulting contract, including heightening the risk to the State of possible contract nonperformance</li></ul> |

---

|                    |   |
|--------------------|---|
| <b>Notify OSDs</b> | Notify OSDs of suspected unlawful situations. It is unlawful to: <ul style="list-style-type: none"><li>• Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a State contract (GC 14842.5 (a)(6))</li><li>• Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a State contract (Military &amp; Veterans Code 999.9(a)(5))</li></ul> |
|--------------------|---|

---

## CUF Evaluation Test

---

### CUF evaluation tests

Follow the steps below to determine CUF compliance. This pertains to:

- Certified primes who are not the direct manufacturer of the contracted goods or direct provider of contracted services and not using subcontractors
- Certified primes using subcontractors (whether or not the subcontractor(s) is certified)
- Certified subcontractors

From the Bidder Declaration, analyze the description of goods/services the firm is to provide. Determine whether the supplier's role is limited to that of an extra participant and/or through which funds are passed in order to obtain the appearance of certified participation (e.g. for SB, DVBE, etc.).

To be considered compliant, four tests must be passed as described in the following table.

| For Each Certified Supplier: |   |
|------------------------------|---|
| Test                         | Question  |
| 1                            | Is the supplier (whether it is the prime or a subcontractor) responsible for the execution of a distinct element of the resulting State contract? |
| 2                            | Will the supplier actually be performing, managing, or supervising an element of the resulting State contract?                                    |
| 3                            | Will the supplier be performing work that is normal for its business, services and function?  |
| 4                            | Is there any further subcontracting that is greater than that expected to be subcontracted by normal industry practices?                          |

Exception: Any time a certified prime does not propose the use of subcontractors and is the manufacturer of goods furnished under the contract or providing personnel to perform services sought in the contract, the prime is CUF compliant.

Businesses that possess appropriate contractor licenses and are performing a public works aspect of a proposed contract are CUF compliant for the corresponding public works portion of the contract.

---

### File documentation

Buyers will document the procurement file to capture results of the CUF assessment for each certified supplier. Also buyers shall document the rationale for conclusion and include any follow-up measure taken by the buyer to verify compliance.

---

*Continued on next page*

## CUF Evaluation Test, Continued

### Examples

The following table provides examples that are based on a solicitation that specifies goods be provided, delivered "F.O.B. Destination" to an identified location, and installed.

| Example | Description  |
|---------|--|
| 1       | <p>The prime is not certified and proposes the use of one subcontractor who is not certified.</p> <p><b>Result:</b> Since no businesses possess a certification, a CUF evaluation is not performed. Bidder responsibility and bid responsiveness are still evaluated.</p>  |
| 2       | <p>The prime is a certified DVBE who does not propose the use of subcontractors. The Bidder Declaration states that the bidder will provide and install the goods. It is known that the brand of goods bid is manufactured by the DVBE.</p> <p><b>Result:</b> CUF compliant – Since no subcontractors are proposed, and the DVBE manufactures and installs the goods with its own personnel, compliance is achieved.</p> <p><b>Note:</b> For this hypothetical example, delivery of the goods by sources external to the prime does not preclude CUF compliance since delivery is incidental, not a separately priced line item and standard industry practice includes utilizing external delivery sources.</p>   |
| 3       | <p>The prime is a certified small business who does not propose the use of subcontractors. The Bidder Declaration states that the bidder will provide and install the goods. Identified elsewhere within the bid is that the bidder is an authorized reseller of the goods.</p> <p>Test #1 – The resulting contract requires that goods be provided, delivered and installed. The prime will be responsible for the execution of the entire contract.</p> <p>Test #2 – The prime is an authorized reseller of the goods and is the entity that will provide the goods and thus perform that contract element. It appears that the prime will also be using its own personnel to provide installation.</p> <p>Test #3 – When the OSDS website is checked, the prime is currently certified and the CUF indicator is consistent with the goods provided.</p> <p>Test #4 – The prime is not further subcontracting elements greater than what is expected by normal industry practices.</p> <p><b>Result:</b> CUF compliant – The prime met all four tests.</p> <p><b>Note:</b> For this hypothetical example, delivery of the goods by sources external to the prime does not preclude CUF compliance since delivery is incidental, not a separately priced line item and standard industry practice includes utilizing external delivery sources.</p> |

## CUF Evaluation Test, Continued

| Example | Description  |
|---------|--|
| 4       | <p>The prime is a certified microbusiness who does not propose the use of subcontractors. The Bidder Declaration states that the prime will provide everything needed for the contract, including oversight and coordination.</p> <p>Test #1 – The resulting contract requires that goods be provided, delivered and installed. The prime will be responsible for the execution of the entire contract.</p> <p>Test #2 – The prime does not appear to be a manufacturer or an authorized reseller. It is not clear whether their personnel will actually be performing, managing, or supervising an element of the resulting contract.</p> <p>Test #3 – Since the role of the prime is not clear; it is not known whether work performed is normal for its business, services and function. When the OSDS website is checked, the prime is currently certified but there is no CUF indicator.</p> <p>Test #4 – Since the prime does not appear to be a manufacturer or an authorized reseller; it is possible that a supplier(s) is being used to perform all elements of the resulting contract which would not be considered a normal industry practice.</p> <p><u>Result:</u> Clarification is required. Information can either be acquired through written request to the bidder (if allowed for the solicitation), research or market analysis.</p> |
| 5       | <p>The prime is a certified small business who proposes the use of one subcontractor who is <u>not</u> certified. The Bidder Declaration states that the prime will provide the goods and handle the delivery. The subcontractor will perform the installation.</p> <p>Test #1 – The resulting contract requires that goods be provided, delivered and installed. The prime will execute two elements of the contract and be responsible for the installation work performed by the subcontractor, thus responsible for the entire contract.</p> <p>Test #2 – The prime is the entity that will provide the goods and handle the delivery and thus perform those contract elements.</p> <p>Test #3 – Although the OSDS website identifies the prime as currently certified, there is no CUF indicator. The goods solicited are products normally provided by the prime.</p> <p>Test #4 – For the type of goods solicited, it is not unusual that other entities might be used to install the goods.</p> <p><u>Result:</u> CUF compliant – The prime met all four tests.</p> <p><b>Note:</b> Since the only certified business is the prime, CUF compliance is not evaluated for the subcontractor.</p>   |

*Continued on next page*

## CUF Evaluation Test, Continued

| Example | Description  |
|---------|--|
| 6       | <p>The prime is <u>not</u> certified and proposes the use of two subcontractors who are both certified small businesses. The bidder is a non-small business claiming small business preference for use of certified small business subcontractors. The Bidder Declaration states that the prime will manage the contract with one subcontractor providing the goods and the other subcontractor delivering the goods and performing the installation.</p> <p>Test #1 – The resulting contract requires that goods be provided, delivered and installed. The prime will hold subcontractors responsible for execution of all contract elements.</p> <p>Test #2 – The two subcontractors perform all elements of the contract.</p> <p>Test #3 – The OSDS website identifies that both subcontractors possess current certifications but only one has a CUF indicator. The indicator is consistent with the work being performed by that subcontractor. What is proposed in the solicitation for the other subcontractor are goods normally provided by that subcontractor.</p> <p>Test #4 – The subcontractors are not further subcontracting with other entities.</p> <p><u>Result:</u> CUF compliant – Both subcontractors met all four tests.</p> <p><b>Note:</b> Since the only certified businesses are the subcontractors, compliance is evaluated for each subcontractor but not for the prime. Bidder responsibility and bid responsiveness are still evaluated.</p> |

*Continued on next page*

## CUF Evaluation Test, Continued

| Example | Description   |
|---------|---|
| 7       | <p>The prime is a certified SB/NVSA who proposes the use of one subcontractor who is <u>not</u> certified. The Bidder Declaration states that the prime will be “performing a commercially useful function since it will be managing the contract, placing orders, verifying timeliness of delivery, and handling billing.” Stated is that the subcontractor will provide/deliver the goods and handle the installation.</p> <p>Test #1 – The resulting contract requires that goods be provided, delivered and installed. The prime is responsible for execution of the contract.</p> <p>Test #2 – The prime is not identified as the entity that will actually be performing one or more contract elements.</p> <p>Test #3 – The OSDS website identifies the prime as currently certified and a CUF indicator is present. However, the indicator is not consistent with elements in the resulting contract.</p> <p>Test #4 – The prime is subcontracting all contract elements. This would not be a normal industry practice.</p> <p><b>Result:</b> Not CUF compliant – Tests #2, #3, and #4 were not met. It appears that the prime is an extra participant in the contract and acting as a “pass through.” The work to be performed by the SB/NVSA as stated in the Bidder Declaration is not work for which the State is placing the contract. Since the prime is not CUF compliant, the bid must be rejected. The situation should be reported to OSDS to identify the disparity between the prime’s proposed contract performance and the website CUF indicator. Also reported would be the aspect of an SB/NVSA that appears to be proposing less than 75% of the person-hours of direct labor required for the production of goods and the services performed for the resulting contract.</p> <p><b>Note:</b> Since the only certified business is the prime, CUF compliance is not evaluated for the subcontractor)</p> |

*Continued on next page*



## CUF Evaluation Test, Continued

| Example | Description  |
|---------|--|
| 8       | <p>The prime is <u>not</u> certified and proposes the use of two subcontractors who are both certified DVBEs. The solicitation included the DVBE requirement. Properly documented is a good faith effort but the bid identifies compliance through goal attainment. The Bidder Declaration states that the prime will provide some of the goods, plus be responsible for delivery and installation. Subcontractor #1 will provide the remainder of the goods. Subcontractor #2 is listed as providing accounting services for the contract.</p> <p>Test #1 – The resulting contract requires that goods be provided, delivered and installed. Subcontractor #1 is responsible for a portion of the goods. Subcontractor #2 is responsible for activities related to the contract but not a specific element of the contract.</p> <p>Test #2 – Subcontractor #1 will perform a portion of the contract. The activities performed by Subcontractor #2 were not requested by the State.</p> <p>Test #3 – Although the OSDS website identifies both subcontractors as certified, neither has a CUF indicator. What is proposed in the solicitation are goods and services normally provided by the respective subcontractors.</p> <p>Test #4 – The subcontractors are not further subcontracting with other entities.</p> <p><b>Result:</b> Subcontractor #1 is CUF compliant. Since Tests #1, #2, and #3 were not met, Subcontractor #2 is <u>not</u> CUF compliant. Subcontractor #2 is being used to provide an “appearance” of participation to meet the DVBE goal. Even though Subcontractor #2 is not CUF compliant, bid rejection is not required. Without inclusion of Subcontractor #2 the DVBE goal will not be met; however, the good faith effort was adequately documented. If awarded the contract, Subcontractor #2 would not be included in the contract. Should this occur, both the prime and the eliminated subcontractor should be notified. The prime should be notified in conjunction with the letter of intent to award (or as applicable) and a letter sent to the subcontractor following award. This situation should be reported to OSDS to identify a bidder’s proposed inappropriate use of a certified subcontractor.</p> <p><b>Note:</b> Since the only certified businesses are the subcontractors, compliance is evaluated for each subcontractor but not for the prime. Bidder responsibility and bid responsiveness are still evaluated.</p> |

**Contact OSDS** Subsequent to award send a letter to OSDS to report situations where fraud or intentional misrepresentation is suspected related to CUF. Provide copies of pertinent bid documents or other information.

[Click](#) here to access the OSDS web page.